vital moments of its creation [30] or its receipt [31] has jurisdiction to tax it, regardless of the intent of its owner as to its future location. If past accumulated income is brought into the state, however, the protection afforded is analogous rather to that given ordinary chattels than to that given peculiarly to income as income; and jurisdiction to tax should depend on the same principles as does that to tax ordinary personalty.

It appears thus that, regardless of the character of the tax its laws impose, the jurisdiction of the state of the new domicil to tax income is limited, except in the rare case mentioned, either by the actual lack of jurisdiction or the prohibition on its exercise placed by the Fourteenth Amendment, to the levy of a tax on or with respect to only so much of the total income as was acquired after the acquisition of the new domicil.[32]

RECENT CASES

BANKRUPTCY — PREFERENCES — LIABILITY OF TRUSTEE FOR TAX LEVIED AFTER THE ADJUDICATION. — In March, 1919, B was adjudicated a bankrupt. In September, 1919, Wisconsin passed a law levying a tax on 1918 incomes. Under the Bankruptcy Act, which provides for priority of payment of taxes due and owing from the bankrupt to the state, Wisconsin sought an order directing the payment of this tax. (1913 U. S. COMP. STAT., § 9648). *Held*, that the trustee in bankruptcy should pay the tax. *Matter of Borden Company, Bankrupt*, 47 A. B. R. 396 (7th Circ.).

The provision in the Bankruptcy Act for the payment of taxes does not specify the time when they must be due and owing, but this is interpreted to mean at the time of the adjudication. *First National Bank* v. *Aultman*, 12 A. B. R. 12 (N. D. Ohio). See *New Jersey* v. *Anderson*, 203 U. S. 483, 494; *In re Sherwoods*, 210 Fed. 754, 758 (2d Circ.). The principal case does not satisfy this requirement. Nor is it aided by the interpretation that it is sufficient if a tax is assessed though it is not yet collectible. See *In re William F. Fisher & Co.*, 148 Fed. 907, 912 (D. N. J.); *Matter of Ramirez*, 39 A. B. R. 320, 323 (D. P. R.). It is true that a trustee in bankruptcy is liable for current taxes on property in his possession. *Swarts* v. *Hammer*, 120 Fed. 256 (8th Circ.). This liability is generally treated as governed by the provision of the Bankruptcy Act relating to the payment of taxes. *In re Sims*, 118 Fed. 356 (W. D. Ga.). But it would seem better to treat it not as a tax but as an expense of administration. So treated it is clear that no analogy in support of the result of the principal case can be drawn from the trustee's liability for current taxes. *Cf. First National Bank* v. *Aultman, supra; Matter of Emmerman* v. *Ohio Steel Specialty Co.*, 13 A. B. R. 40 n. (N. D. Ohio).

BANKRUPTCY — PROCEDURE AND PRACTICE — CLAIM FOR FEDERAL TAXES BARRED IF NOT FILED WITHIN A YEAR AFTER ADJUDICATION. — X, then owing federal income taxes for the previous year, filed a voluntary petition in bankruptcy and was duly adjudicated a bankrupt. More than a year after the

[30] Shaffer *v.* Carter, *supra*.

[31] Maguire *v.* Tax Commissioner, *supra;* Maguire *v.* Trefry, *supra*.

[32] Conversely, in each case the state of the old domicil should have jurisdiction to tax that part, or with respect to that part, of the income which was acquired before the change. If the state of the old domicil purported to affix the liability as a tax on the parent property at the instant the income was created, it would in effect be a tax on the income. At all events it would be unobjectionable. See note 13, *supra*.

adjudication an order was entered barring the United States from participating in the estate. The Bankruptcy Act provides that "claims shall not be proved subsequent to one year after the adjudication." BANKRUPTCY ACT OF 1898, § 57 (n.); 30 STAT. AT L. 544, 561. *Held*, that the order be affirmed. *United States* v. *Lytle*, 66 N. Y. L. J. 1539 (C. C. A., 2d Circ.).

In spite of the mandatory provision of the statute, it has been held that claims due the government need not be proved within a year. *In re Stoever*, 127 Fed. 394 (E. D. Pa.). See also *In re Prince & Walter*, 131 Fed. 546 (M. D. Pa.); *In re William F. Fisher & Co.*, 148 Fed. 907 (D. N. J.); *In re Cleanfast Hosiery Co.*, 4 A. B. R. 702 (S. D. N. Y.). One reason given is that statutes of limitations ordinarily do not bind the state. See *Magdalen College Case*, 11 Rep. 66 b, 74 b; WOOD, LIMITATIONS, 4 ed., § 52. See also *United States* v. *Herron*, 20 Wall. (U. S.) 251, 255. But because of the evident policy of having estates wound up speedily, the principal case properly disregards that argument. See *In re Muskoka Lumber Co.*, 127 Fed. 886 (W. D. N. Y.); *In re Sanderson*, 160 Fed. 278 (D. Vt.). Secondly, it is urged that the statute of March 3, 1797, giving the United States priority in all insolvent estates, makes its claim independent of the Bankruptcy Act. See 1 STAT. AT L. 512, 515. This argument prevailed under the Bankruptcy Act of 1867. *Lewis, Trustee*, v. *United States*, 92 U. S. 618. But the Act of 1898 supersedes that statute where the two conflict. *Guarantee Title & Trust Co.* v. *Title Guaranty & Surety Co.*, 224 U. S. 152. The principal case therefore seems right, since the present statute provides that all claims must be filed within a year. A question remains as to the liability of the trustee due to the statute of March 2, 1799. See 1 STAT. AT L. 627, 676. Under previous bankruptcy acts, the United States could refrain from filing a claim, allow the assets to be distributed, and then hold the trustee personally. *United States* v. *Barnes*, 31 Fed. 705 (Circ. Ct., S. D. N. Y.). *Cf. United States* v. *Murphy*, 15 Fed. 589, 593 (Circ. Ct., D. Ind.). But the trustee can hardly be held for distributing an estate in which the United States has lost its right to participate.

BILLS AND NOTES — ANOMALOUS INDORSER — INDORSEMENT BY CASHIER OF BANK AFTER DELIVERY TO PREVENT STOCK ASSESSMENT. — The plaintiff bank was holder of a note which the bank examiner ordered stricken from its list of assets. This would have impaired the bank's capital and resulted in an assessment of stock and possibly receivership. It was agreed that the note should be retained as an asset upon indorsement by the defendant, the bank's cashier. The plaintiff bank, which remained solvent, now sues upon the indorsement. *Held*, that the plaintiff cannot recover. *Cripple Creek State Bank* v. *Rollestone*, 202 Pac. 115 (Colo.).

The defendant was clearly an indorser under the Negotiable Instruments Law. See N. I. L., § 63; 1912, 2 MILLS ANN. STAT., § 5113. *Lightner* v. *Roach*, 126 Md. 474, 95 Atl. 62; *Walker* v. *Dunham*, 135 Mo. App. 396, 115 S. W. 1086. Since the indorsement was made after delivery, he is not liable without new consideration. *American Multigraph Sales Co.* v. *Grant*, 135 Minn. 208, 160 N. W. 676; *Zadek* v. *Forcheimer*, 16 Ala. App. 347, 77 So. 941. See 1 WILLISTON, CONTRACTS, § 108. But consideration can be found in the requested non-action of the examiner. At least in the case of negotiable instruments, consideration need not move from the obligee or to the obligor. *Gay* v. *Mott*, 43 Ga. 252. See WILLISTON, *ubi supra*. The decision therefore is doubtful. In the first place, it may be questioned whether the defendant's promise could in fact be regarded as conditional upon the bank's insolvency. The purpose of the transaction was to protect creditors by having this note become a collectible obligation. This purpose would be defeated if the defendant's liability depended upon judicial speculation about the bank's financial condition when the note became due. Secondly, the